IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 256 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

JITENDRA M RAVAL

Appearance:

1. Special Civil Application No. 256 of 1997

MS NANDINI JOSHI ASST GOVT PLEADER for Petitioner No. 1-1/1

MR BD KARIA for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 06/09/2004

ORAL JUDGEMENT

Heard Ms.Nandini Joshi, learned AGP on behalf of the petitioner and learned advocate Mr.B.D.Kariya for respondent workman.

.RS 2.

#. In the present petition, the petitioner State of Gujarat has challenged the award passed by the labour court, Rajkot in Reference No.639 / 1993 dated 25th August, 1995, whereby the labour court has set side the termination order and granted reinstatement with continuity of service and 70 % backwages with effect from 19th December 1993.

#. Ms.Joshi, learned AGP has raised contentions that the respondent had not remained in service for a period of twelve months continuously and therefore, he is not entitled to benefit of Section 25-F of the I.D.Act, 1947. She also submitted that termination of workman was in the year 1987 but he raised the industrial dispute in the year 1991 and therefore there was delay of four years and hence, the labour court has committed gross error in granting relief in favour of the respondent workman. She further submitted that burden is upon the employee to prove continues service of 240 days and not upon the employer and that burden was not discharged by the employee and therefore, the labour court has committed gross error in allowing the reference in favour of the respondent. Except that no other submission made by the learned AGP Ms.Joshi before this Court.

#. Mr.B.D.Karia, learned advocate for the respondent workman has submitted that the labour court has rightly passed the award in question granting relief in favour of the respondent. He also submitted that looking to the definition of sub Section [2] of Section 25[b], it is enough to have completion of 240 days continues service even within less than twelve months period. Therefore, the labour court has rightly appreciated the legal provisions while granting the relief in favour of the respondent. He also submitted that the respondent workman had deposed before before the labour court vide Exh.11 that he remained in continues service for more than nine months and his service was terminated on 30th June, 1987. Against this evidence, no documentary evidence has been produced by the petitioner before the labour court and therefore, when the petitioner having documentary evidence such as pay register, muster roll of the workman concerned, and not produced the same before the labour court, the labour court is entitled to have adverse inference against the petitioner and that has been rightly done by the labour court and the labour

court has not committed any error which in no way requires interference by this Court.

#. I have considered submissions of the learned advocates for the parties. Statement of claim was filed by the workman at Exh.5. The respondent workman was working with effect from 1st September, 1986 and his service was terminated on 30th June, 1987. He was receiving Rs.21/- as daily wage from the petitioner. At the time of terminating service, Section 25-F was not complied with by the petitioner. Juniors to the respondent were continued in service and new employees were also recruited by the petitioner. The petitioner filed written reply at Exh.8 and raised contention that the respondent workman left the job at his own volition, meaning, abandonment of service and service of the respondent workman was not terminated by the petitioner. No recruitments were made in place of the respondent workman by the petitioner. No provisions of I.D.Act have been violated by the petitioner. After 1986, there is restriction or ban imposed by the Government to employ any daily wager. The workman remained silent from 1987 to 1991 and therefore, reference required to be rejected. Before the labour court, the workman was examined vide Exh.11 and witness of the petitioner was also examined at Exh.16. After considering the oral and documentary evidence and submissions made by the respective parties, the labour court has come to the conclusion that in all the workman was in service for ten months continuously and no documentary evidence has been produced by the petitioner though the same was in their possession as regards the workman the muster roll, pay register to prove the working days attended by the workman. Therefore, in absence of the said documents, the labour court has drawn adverse inference against the petitioner while relying upon the oral evidence of the respondent workman to the effect that he had completed continuous service of 240 days. It is not case of the petitioner that while employing the respondent workman in service, or engaging him as daily wager, identity card, pay slip, muster card or any other documents were given to the workman so that the same could have been produced by the workman before the labour court. Obviously, when the employer has not given any documentary evidence to the workman at the time of employing him in service,then employer should not have asked from the workman any documents for proving his case about continues service of 240 days. The law on this issue is very well clear and settled. If the workman having documents and not produced the same, then it is burden on the workman to prove the fact as regards continue service of 240 days.

But if the workman has not been given any documentary evidence, in such eventuality, the employer has to disprove the facts came on record in oral evidence before the labour court. In the present case, the petitioner has not produced any documentary evidence. Normally, muster roll, pay register or working days of the workman concerned are in possession of the employer, since not produced by the petitioner before the labour court, the labour court has drawn adverse inference against the petitioner and relied upon the oral evidence of the workman. It was also not case of the petitioner before the labour court that Section 25-F was complied with by the petitioner. Therefore, non compliance of Section 25-F despite of attendance of employment for more than 240 days continues service by the workman, then, the order of termination becomes ab initio void. This aspect has been examined by the Apex Court in case of Mohan Lal vs. Bharat Electronics Ltd. reported in AIR 1981 SC 1253.

#. The labour court has further examined the question whether the workman has left the job at his own or not; or, it was termination by the petitioner. The labour court has considered that if the workman has left the job and not reported for duty,then it was the duty of the petitioner to call him on duty by sending communication in writing. But no such correspondence were produced by the petitioner before the labour court. Even according to the written statement of the petitioner, no such averments made that any communication was sent to the respondent calling upon him to resume on duty. Therefore, contention of the petitioner rightly not accepted by the labour court in absence of the evidence. Thereafter, the labour court has considered the question of backwages. The petitioner has not proved any gainful employment of the workman and workman remained silent for a period of four years. Therefore, the labour court has not granted any amount of backwages for the period from 30th June, 1987 to 19th December 1993 but only granted 70 % backwages from 19th December, 1993. Therefore, due care has been taken by the labour court in considering all these facts and not granted any amount of backwages for the period from 1987 to 1993. Therefore, the labour court has rightly denied backwages to the workman and granted 70 % backwages for the interim period.

#. I have perused the entire award in question. In my opinion, the labour court has not committed any error while passing such award. It is clear case of violation of Section 25-F of the I.D.Act. If Section 25-F has been

violated, the order of termination or retrenchment is rendered ab initio void. Ordinarily, the workman is entitled to full backwages unless exception is pointed out by the employer. In this case also, exception was about delay of about four years which has been rightly taken care of by the labour court. It is not necessary that the workman should have remained in continues service for twelve months from the date of entitlement of the benefits under Section 25-F of the I.D.Act. Section 25[b] defines continues service. According to the said definition, if the workman completed 240 days continues service from the date of termination preceding twelve months, then he is entitled to benefit of Section 25-F of the I.D.Act. Even if within eight months the workman had completed 240 days continues service, then also, he is entitled to benefit of Section 25-F of the I.D.Act. In this case also, the workman remained in service for ten months. The oral evidence of the workman was not disproved by the petitioner by producing documentary evidence before the labour court. Therefore, the labour court has rightly appreciated the oral and documentary evidence and rightly drawn adverse interference against the petitioner and rightly granted relief to the workman, for that, according to the my opinion, the labour court has not committed any error which requires no interference by this Court while exercising the powers under Article 227 of the Constitution of India and as such, no infirmity has been pointed out by the learned AGP Ms.Nandini Joshi. This Court cannot act as appellate authority and even this Court cannot reappreciate the evidence as appreciated by the labour court. Therefore, considering the entire facts and circumstances in its totality, according to my opinion, the labour court has rightly passed the award and as such, not committed any error apparently found on the face of the record. Therefore, there is no substance in the present petition which deserves to be rejected.

#. In view of aforesaid discussion, the present petition fails and the same is rejected accordingly. Rule is discharged. Interim relief, if any, stands vacated. No order as to costs.

Date : 6.9.2004 [H.K.Rathod, J.]

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